

## 7. DISADVANTAGED BUSINESS ENTERPRISE

### BASIC REQUIREMENT

The grantee must comply with the policy of DOT that DBEs, as defined in [49 CFR Part 26](#), are ensured nondiscrimination in the award and administration of DOT-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts; ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs; help remove barriers to the participation of DBEs; and assist the development of firms that can compete successfully in the marketplace outside the DBE program.

### AREAS TO BE EXAMINED

#### 1. *Designated DBE Officer*

- a. Position description
- b. Organization Flow Chart

#### 2. *DBE Program*

- a. Thresholds
- b. Program Submittal
- c. Use of DBE Financial Institutions
- d. Prompt Payment
- e. Program Policy Statement
- f. Signature and Date (Is the GM or CEO same as what is reflected on the statement? RT)

#### 3. *DBE Goals*

- a. Annual Goal Submittals
- b. Uniform Report of DBE Awards or Commitments and Payments
- c. Monitoring
- d. Good Faith Efforts

#### 4. *Certification Process*

- a. Unified Certification Program
- b. DBE certifications
- c. TVM compliance – including listing of TVM's related to rolling stock purchases

#### 5. *DBE Complaints*

- a. Complaint handling procedures
- b. Complaint evaluation/resolution
- c. Complaint Log and status of complaints

### REFERENCES

1. [49 CFR Part 26](#), "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."
2. [www.fta.dot.gov/dbe](http://www.fta.dot.gov/dbe), FTA's DBE website.

# QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a DBE Compliance Review during the past two fiscal years? If yes, when was the site visit? Is a Review scheduled for the current fiscal year?*

## EXPLANATION

Consistent with FTA's oversight responsibilities, FTA has a program of grantee reviews assessing compliance with the DBE regulations. DBE compliance reviews typically last two to three days and assess implementation of the DBE program in 12 areas: Policy Statement; DBE Liaison Officer; Financial Institution; DBE Directory; Over-concentration; Business Development Programs; Determining/Meeting Goals; Required Contract Provisions; Certification Standards; Certification Procedures; Record Keeping and Enforcements; and Public Participation and Outreach.

After the review is complete, the review team conducts an exit interview presenting the findings, if any, to the grantee. A draft report documenting the deficiencies and necessary corrective actions is provided to FTA within 30 calendar days of the site visit and is then forwarded to the grantee. A letter and final report is issued to the grantee within approximately 60 days of the site visit. The grantee then will typically have 90 days to take corrective actions and provide appropriate documentation to the Civil Rights Officer (CRO). The CRO will issue a closeout letter once the grantee is fully in compliance.

If a DBE Compliance Review site visit has been conducted within the past two fiscal years, or if one is scheduled for the current federal fiscal year, (FFYs 2006, 2007, and 2008), triennial reviewers should note on the worksheets when the compliance review was performed. If findings from the DBE Compliance Review are still being monitored, or if the review is pending, the triennial review will not include this area. If the DBE Compliance Review is closed, the reviewer should seek guidance from the Regional Civil Rights Officer and the Office of Civil Rights on whether to include the DBE area in the review.

## REASON FOR THE QUESTION

Input to triennial review

## SOURCES OF INFORMATION

During the desk review and immediately prior to the site visit, the reviewer should contact the CRO to determine if a DBE Compliance Review is scheduled or has been conducted during the review period. The Regional Oversight Resource Plan also may contain a schedule of DBE reviews to be held during the year.

## DETERMINATION

None

## SUGGESTED CORRECTIVE ACTION

None

2. *Who is responsible for ensuring that Disadvantaged Business Enterprises (DBEs) are not discriminated against in the award and administration of FTA funded contracts and subcontracts? To whom does this individual report for DBE matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

## EXPLANATION

For grantees that meet the threshold requiring that they have a DBE program, the grantee's Chief Executive Officer (CEO) must designate a DBE Officer and adequate staff to administer the DBE program. The DBE Officer must have direct and independent access to the CEO concerning DBE matters. Care should be taken to avoid conflicts when assigning responsibility for administering the DBE program as a collateral duty assignment.

The DBE Officer performs an oversight function. Therefore, if, for example, the procurement director is made the DBE Officer on a collateral duty basis, there may be a potential conflict of interest. If such an arrangement exists, the grantee should be requested to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis.

## REASON FOR THE QUESTION

49 CFR [26.25](#)

## SOURCES OF INFORMATION

The DBE program submissions to the CRO may include the name and reporting relationship of the DBE Officer. This information should be updated at the site visit. The CRO should be consulted for any indications of past problems with staffing. Current staff assignments should be confirmed in discussions at the site visit. An organization chart can indicate reporting relationships. A job description for the DBE Officer can confirm responsibilities and reporting relationships.

## DETERMINATION

If the grantee has designated a DBE Officer and adequate staff to administer the DBE program and there are no potential conflicts of interest with this assignment, the grantee is not deficient. A temporary staffing problem or coordination problems among responsible offices could lead to a finding of deficiency. If the DBE Officer does not have direct and independent access to the CEO, the grantee is deficient. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles.

## SUGGESTED CORRECTIVE ACTION

The grantee needs to designate DBE responsibilities properly. If the deficiency is related to the reporting relationship of the DBE Officer, the grantee may need to change reporting relationships or assignment of responsibilities. Provide evidence of corrective actions to the CRO.

3. *If the grantee projects awarding more than \$250,000 of FTA funds in prime contracts in a federal fiscal year, exclusive of transit vehicle purchases, did the grantee submit a DBE program to FTA? If not, provide an explanation. Has the grantee's DBE program been approved by FTA?*
4. *Does the approved DBE program on file with FTA reflect the current organizational structure of the agency?*

## EXPLANATION

Written DBE programs are required of FTA recipients receiving planning, capital, and/or operating assistance who will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a federal fiscal year. Contracting opportunities are counted in the aggregate, and can include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects and contracting activities of subrecipients. The DBE program plan is not an annual submission and grantees do not have to submit regular updates of their DBE programs. However, significant changes to the program must be submitted for approval. Grantees (particularly new grantees) that do not meet the threshold are not required to develop a written DBE program.

Grantees required to have a written program that are

part of a municipal government may be allowed to submit a single plan to FHWA if the municipality receives more funding from FHWA than from FTA. If this situation occurs, the CRO should be contacted to confirm that a separate FTA program is not required. The grantee still must submit transit-specific goals to FTA on an annual basis (see Question 7).

Grantees are required to follow their approved DBE programs, and such programs need to be updated if significant changes have occurred. FTA has found in its DBE reviews that organizational changes have occurred and grantees have not updated their programs. Such changes may reflect the reporting relationships of the DBE Officer and the Chief Executive Officer.

## REASON FOR THE QUESTION

49 CFR [26.21](#)

## SOURCES OF INFORMATION

The DBE files should include the grantee's DBE program and correspondence regarding the status of program approval. A current organization chart and job description for the DBE Officer will show if the DBE program on file with FTA is correct. For grantees that do not have approved programs, examine the total grant amounts and evaluate on site contracting opportunities. Purchases of fuel, spare parts, and other FTA funded operating expenses, as well as capital procurements, may exceed \$250,000 when combined.

## DETERMINATION

If the grantee has an approved DBE program, the grantee is not deficient. If the grantee has submitted its program to FTA along with any additional information requested, and is awaiting a response, the grantee is not deficient.

A grantee is deficient if:

- A program has not been submitted and the grantee has \$250,000 of FTA funds in contracting opportunities or the grantee has not responded to FTA's request for additional information.
- Organizational changes that affect the DBE program have occurred and the DBE program on file with FTA has not been updated or approved by FTA.

## SUGGESTED CORRECTIVE ACTION

The grantee needs to submit its DBE Program.

5. *What efforts has the grantee made concerning DBE financial institutions?*

### EXPLANATION

Grantees that meet the threshold requiring that they have a DBE program are required to thoroughly investigate the full extent of services offered by financial institutions in the community owned and controlled by socially and economically disadvantaged individuals (DBE Financial Institutions) and make reasonable efforts to use these institutions. Grantees are also required to encourage prime contractors to use such institutions.

### REASON FOR THE QUESTION

49 CFR [26.27](#)

### SOURCES OF INFORMATION

Documentation of the efforts to find and use DBE financial institutions can be obtained during the site visit. A list of DBE financial institutions by state can be found at the U.S. Department of Treasury's Financial Management Services website located at: [www.fms.treas.gov/mbdp/current\\_list.html](http://www.fms.treas.gov/mbdp/current_list.html). Current progress and any outstanding issues should be discussed at the site visit.

### DETERMINATION

A grantee is deficient if it has not made efforts to use DBE financial institutions.

### SUGGESTED CORRECTIVE ACTION

The grantee needs to submit documentation of efforts to utilize DBE financial institutions.

6. *What efforts has the grantee made to ensure prompt payment of DBE subcontractor invoices and return of retainage?*

### EXPLANATION

Grantees that meet the threshold for having a DBE program have the responsibility to ensure that contractors are properly using and managing DBE subcontractors, including the prompt payment of such subcontractors. Recipients must have a contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the grantee. Additionally, grantees must ensure prompt and full payment of retainage from the prime contractor to subcontractors within 30 days after the subcontractors' work is satisfactorily complete.

### REASON FOR THE QUESTION

49 CFR [26.29](#)

### SOURCES OF INFORMATION

Review of procurement files should provide information on the inclusion of appropriate prompt payment and return of retainage clauses and policies. A review of contract administration or contract compliance mechanisms should provide information on a grantee's means of enforcing these requirements.

### DETERMINATION

A grantee is not deficient if it has included prompt payment and return of retainage clauses in its contracts and has demonstrated appropriate means to enforce these requirements. A grantee is deficient if it has not included prompt payment and return of retainage clauses in its contracts, or if it cannot demonstrate that it has appropriate mechanisms to enforce these requirements.

### SUGGESTED CORRECTIVE ACTION

The grantee needs to submit documentation of efforts to ensure DBE contractors are paid promptly.

7. *Did the grantee develop overall annual DBE goals based on the relative availability of DBEs in the area? Did the grantee conduct a consultive process in setting these goals? Did the grantee publish their goals for 45 days in general circulation media and available minority-focused media and trade association publications prior to submission to FTA? Did the grantee submit annual goals timely to FTA for review?*
8. *Has the grantee been submitting the Uniform Report of DBE Awards or Commitments and Payments semi-annually?*

### EXPLANATION

Grantees that anticipate having (excluding transit vehicle purchases) \$250,000 or more in FTA funds for contracting opportunities in a federal fiscal year are required to develop overall goals for that fiscal year. Overall goals should be calculated as a percentage of all FTA funds (exclusive of funds to be used for the purchase of transit vehicles) that the grantee will expend in FTA-assisted contracts in the forthcoming fiscal year. Grantees also may be permitted to express an overall goal as a percentage of funds for a particular grant and/or project with prior FTA approval.

Overall DBE goals must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FTA-assisted contracts ("relative availability of DBEs"). The goal must reflect the grantee's determination of the level of DBE participation the grantee would expect absent the effects of discrimination. Grantees cannot rely on either the 10 percent aspirational goal at the national level, or the previous goal, or past DBE participation rates without reference to the relative availability of DBEs in the market.

In establishing an overall goal, grantees must provide for public participation. This public participation must include the following steps in this order:

1. Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish a level playing field for the participation of DBEs.
2. A published notice announcing proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the principal office for 30 days following the date of the notice, and informing the public that comments on the goals will be accepted for 45 days from the date of the notice. The notice must include addresses (including the FTA CRO's address) to which comments may be sent. The notice must be published in general circulation media and be available in minority-focused media and trade association publications. Publication of DBE goals on the entity's website or any website is not sufficient to meet the publication requirement.

Overall goals for the upcoming federal fiscal year must be submitted to FTA for review by August 1 of each year. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. FTA will review the submittals and advise the grantee if the overall goal has not been calculated correctly or if the method used for calculating the goal is inadequate. If so, FTA may, after consulting with the grantee, adjust the overall goal or require the grantee to make the adjustment.

Note: For grantees in the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington the 9<sup>th</sup> Circuit Court has issued a decision that affects DBE programs [*Western States*

*Paving Co. v. State of Washington Dept. of Transportation*, 407 F. 3d 983 (9th Cir. 2005)]. For grantees in these states a disparity analysis must be completed before goals can be established. Consult with the Regional Civil Rights Officer to determine the appropriate questions for grantees in these states.

Each grantee that meets the threshold requiring them to have a DBE program also is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually. This report is available at [www.fta.dot.gov/dbe](http://www.fta.dot.gov/dbe). Reports are due by June 1<sup>st</sup> (for the period covering October 1 – March 31) and by December 1<sup>st</sup> (for the period covering April 1 – September 30)

## REASON FOR THE QUESTION

49 CFR 26.45 and 26.11

## SOURCES OF INFORMATION

The DBE files should include correspondence regarding annual overall DBE goal and semi-annual report submittals. Any outstanding materials (e.g., submission of current year goals) can be obtained at the site visit. Also, an on site evaluation of the contracting opportunities should be made to determine if grantee has properly calculated contracting opportunities. Current progress, semi-annual reports, and any outstanding issues should be discussed at the site visit.

## DETERMINATION

If the grantee has submitted annual DBE goals by the August 1 deadline, has responded to any request by FTA for additional information on the goal setting methodology, or requested and received a formal extension for filing that was met, the grantee is not deficient. A grantee is deficient if:

- Overall annual DBE goals were not submitted to FTA by August 1.
- Goals were not calculated in accordance with the regulations.
- The goals setting process did not include a public participation process with consultation and actual copy of DBE public notice, with a proof of publication or affidavit of publication.

If a grantee has been submitting the report on awards, commitments, and payments semi-annually, it is not deficient. If the grantee has not been submitting the reports semi-annually, has not been submitting them timely, or is not using the current form, the grantee is deficient.

## SUGGESTED CORRECTIVE ACTION

The grantee needs to submit its annual overall DBE goal or adjusted goal to the CRO or certify that future

goals will be submitted by August 1. The grantee must develop a public participation process and provide FTA documentation of the implementation of the process. The grantee needs to submit the Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1) to the CRO.

9. *How does the grantee monitor subrecipients, contractors, and subcontractors to ensure that DBE obligations are fulfilled?*
10. *How frequently does the grantee conduct site visits to observe that DBEs are actually performing the work on contracts? Does the grantee check payroll records to ensure that the employees working on the job are actually employees of the DBE and not the prime contractor? Does the grantee look at the title to heavy equipment used on the project to ensure that the equipment is owned or leased by the DBE?*

#### **EXPLANATION**

Grantees that meet the funding thresholds for a DBE program must have a process to monitor subrecipients, contractors, and subcontractors for compliance with applicable DBE requirements. Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (e.g., applying legal and contract remedies available under Federal, state, and local law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Recent investigations by the U.S. DOT Office of the Inspector General have raised concerns about the administration of DBE programs. Specifically, it has been found that DBE certified firms are serving as "fronts" for ineligible firms. A grantee's responsibility for monitoring DBE participation does not end with the certification process. On large capital projects, the DBE Officer or the Project Manager should document periodic efforts to monitor on-site DBE activities, as described in the question above. On smaller projects, grantees should at minimum require the submittal of evidence that DBEs have been paid by the prime contractor in a timely manner for the work described in the bid or proposal.

#### **REASON FOR THE QUESTION**

49 CFR 26.37

#### **SOURCES OF INFORMATION**

The grantee's DBE program should be reviewed to identify the methods that the grantee says it will use to monitor subrecipients, contractors, and subcontractors. At the site visit, the grantee should provide examples of actual monitoring activities/reports during the past three years.

#### **DETERMINATION**

If the grantee is monitoring its subrecipients, contractors, and subcontractors, the grantee is not deficient. If the grantee cannot describe how it is monitoring its subrecipients, contractors, and subcontractors satisfactorily, the grantee is deficient.

#### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to begin monitoring subrecipients, contractors, and subcontractors and provide documentation of corrective actions to the CRO.

11. *Did the grantee award a contract to a firm that did not meet a specific DBE contract goal? If yes, how did the grantee determine if "good faith efforts" by the firm were sufficient? Does the grantee require contractors to obtain approval from its DBE Officer prior to substituting a DBE firm after contract award?*

#### **EXPLANATION**

For grantees that meet the threshold in Question 3, the grantee's DBE Officer should play a key role in procurement decisions to ensure that the DBE program is implemented properly. This series of questions should be asked during the review of procurement files to help the reviewer determine compliance. Prior to awarding a contract to a firm that did not meet a specific DBE contract goal, the grantee must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goals. Examples of efforts the grantee may consider include: whether the contractor attended any pre-bid meetings held by the grantee to inform DBEs of contracting opportunities or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR Part 26.

The grantee's DBE Officer also must approve and retain documentation of any requests by contractors to substitute DBEs after a contract is awarded. The

contractor must have a bona fide reason for the request to substitute the firm and must make good faith efforts to retain another certified DBE firm for the same amount of work.

### **REASON FOR THE QUESTION**

49 CFR [26.53](#) and [Appendix A](#)

### **SOURCES OF INFORMATION**

At the site visit, the grantee should explain its methods for determining “good faith efforts.” The grantee’s procurement files should document its consideration of “good faith efforts,” where applicable.

### **DETERMINATION**

If the grantee has a method for determining “good faith efforts” and procurement files document the consideration of “good faith efforts,” the grantee is not deficient. If the grantee cannot describe the methods, or applicable procurement files do not include documentation of the consideration of “good faith efforts,” the grantee is deficient.

### **SUGGESTED CORRECTIVE ACTION**

The grantee should develop a method for determining “good faith efforts” and/or include documentation in applicable procurement files and provide evidence of any actions to the CRO.

12. *Is the grantee participating in a Unified Certification Program (UCP)?*
13. *Does the grantee certify DBEs itself? If so, is the grantee’s DBE certification process consistent with the standards of Subpart D of 49 CFR Part 26? Does the grantee follow the certification procedures of Subpart E of 49 CFR Part 26, including conducting site visits prior to certification and obtaining annual affidavits from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation?*

### **EXPLANATION**

The regulations require that all DOT grantees participate in a UCP within their state. Even if a grantee does not certify DBEs, they are required to be signatory to its state’s UCP agreement.

The certification procedures help to reduce fraud and ensure that only eligible DBEs are certified and participate in the DBE program. Any grantee that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as

eligible DBEs consistent with the standards of Subpart D participate as DBEs in the program. The regulations give specific guidance on determining eligibility based on group membership or individual disadvantage, business size, ownership, and control. The application form to be used for certification of DBEs was issued in a Federal Register Notice of June 16, 2003 and is Appendix F of [49 CFR Part 26](#).

The regulations also require that the certifying agency either conduct site visits, or, if the DBE is located out-of-state, the certifying agency must obtain evidence that a certification site visit was conducted prior to the initial certification. Further, the regulations require that annual affidavits must be obtained from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulations.

### **REASON FOR THE QUESTION**

[49 CFR Part 26.61-26.91](#)

### **SOURCES OF INFORMATION**

The grantee should provide information regarding its participation in a UCP. Grantees should have copies of the agreements they have signed to participate in the UCP.

If a grantee certifies DBEs, it should provide a copy of its DBE application and instructions to demonstrate compliance with these requirements. At the site visit, the grantee should also make available DBE certification files (if it certifies DBEs) for a random sample of two or three DBE firms to demonstrate that the certification procedures are in place. The application should address the group membership or individual disadvantage, business size, ownership, and control. Certification files should show evidence of a site visit prior to certification and annual affidavits of continued DBE eligibility. The reviewer should examine a sample of annual affidavits for DBE firms that have performed work during the past three years and record the dates that these were submitted. (Note: the grantee may not be doing its own certification but may be relying upon the UCP. In such case files would not be available.)

### **DETERMINATION**

If the grantee is not participating (through at least being signatory to the state’s agreement) in the UCP, the grantee is deficient. If the grantee’s certification application and/or files contain the criteria and documentation to determine DBE initial and continued eligibility in accordance with the Certification Standards and Procedures, the grantee is not deficient. If the grantee is not using the criteria or has not followed the procedures, the grantee is deficient.

### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to submit a description of how it will participate in the UCP. The grantee needs to

implement standards and procedures to determine initial and continued DBE eligibility in accordance with [49 CFR Part 26.61-26.91](#) and provide evidence of the corrective action to the CRO.

- 14.** *For procurements of transit vehicles (e.g., buses, railcars, vans) during the past three years, did the grantee obtain DBE certifications from the transit vehicle manufacturers (TVM) with the bids/proposals submitted?*

#### **EXPLANATION**

All grantees must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of [49 CFR 26.49](#). The certification should reference [49 CFR Part 26](#) (not [Part 23](#)). The grantee is required to include a provision in its bid specifications requiring the certification from TVMs, distributors, or dealers as a condition of permission to bid. A list of approved TVMs is available at the FTA website: [www.fta.dot.gov/dbe](http://www.fta.dot.gov/dbe). Evidence that the website has been checked to verify the TVM certification should be included in applicable procurement files, although it is not required.

#### **REASON FOR THE QUESTION**

[49 CFR 26.49](#)

#### **SOURCES OF INFORMATION**

At the site visit, grantee procurement files for transit vehicles should include TVM certifications.

#### **DETERMINATION**

If the grantee includes a provision in its bid specifications requiring TVM certifications and the grantee has obtained the TVM certifications from successful bidders, the grantee is not deficient. If the grantee does not include a provision in its bid specifications requiring TVM certifications, if the files do not contain TVM certifications from successful bidders, or if the TVM certification is out-of-date (references [Part 23](#) instead of [Part 26](#)) the grantee is deficient.

#### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to include a provision in applicable bid specifications requiring current TVM certifications;

and/or obtain TVM certifications from successful bidders; and provide the CRO with evidence of its corrective action.

- 15.** *Did the grantee receive any complaints alleging that it did not comply with the DBE regulations in the past three years? What is the grantee's process for handling and resolving such complaints? Do the complaints indicate any problems with the DBE program?*

#### **EXPLANATION**

Any person who believes that the DBE regulations have been violated may file a written complaint.

#### **REASON FOR THE QUESTION**

[49 CFR 26.103](#)

#### **SOURCES OF INFORMATION**

Information regarding complaints may be obtained from headquarters, CROs, or the grantee. A listing of all complaints during the past three years and the disposition of such complaints should be made available at the site visit. Individual complaint files can be reviewed. Discussions with responsible officials and employees may be necessary.

#### **DETERMINATION**

If the grantee has documentation indicating that complaints are being addressed, the grantee is not deficient. If no complaints have been received but the grantee provides a satisfactory explanation of how complaints would be processed, the grantee is not deficient. (There is no specific requirement that there be a written complaint handling process.) If complaints indicate that the grantee is violating DBE program regulations or if the complaints do not receive a response, the grantee is deficient.

#### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to resolve any outstanding complaints and/or develop and implement procedures for handling DBE complaints and submit these procedures to the CRO.